WRIT PETITION NO. 860 OF 2003

Pritam Singh ---------- Petitioner

Versus

Judge Small Causes Court and another-- Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri B.D. Upadhyaya learned counsel for the petitioner.

The respondents no. 2-Landlord filed suit no. 15 of 1999 for recovery of arrears of rent and ejectment against the petitioner before the J.S.C.C./Civil Judge (Senior Division) Pauri Garhwal. Written statement was filed by the defendant-petitioner alleging therein that he has paid the rent. So far as the water tax and house tax are concerned, he is not liable to pay the same because the premise in question is outside the limit of Municipal Board. The defendant-petitioner has moved an application for summoning the record of Municipal board in support of this averment that the premises is outside the limits of Municipal board as well as for verification of signature of the husband of the respondent no. 2. The application was allowed and the record of Municipal Board was summoned by the learned J.S.C.C. and 2.8.2003 date was fixed. On 2.8.2003 it was revealed that the; record of the Municipal Board could not be summoned because the petitioner has not taken necessary steps. The petitioner further moved an application on 2.8.2003 for summoning of the record of Municipal Board Kotdwar and also for adjournment of the case on that ground. The learned Judge rejected the application on the ground that the petitioner has not taken steps and so the record of Municipal Board could not be summoned and has fixed date 10.10.2003 for agreements, the averment of the petitioner that the premises in dispute is outside the limit of the Municipal Board and he is not liable to pay water tax and house tax is very material fact for deciding the issue and as such for that purpose the record of Municipal board was summoned. The learned Judge has erred in summarily rejecting the application for adjournment on the ground that the steps were not taken by the petitioner. Since the record of the Municipal Board was material for proper adjudication of the case the learned

Judge was not right in summarily rejecting the adjournment application of the petitioner.

The order dated 2.8.2003 is quashed. Learned J.S.C.C./ Civil judge (Senior Division) Pauri is directed to give an opportunity to the petitioner for taking steps for summoning of the record of the Municipal Board.

With these observations the writ petition is disposed of finally.

(M.M. Ghildiyal, J.)

September 9,2003
MPS